IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DERRICK L. SMITH,

Plaintiff,

OPINION AND ORDER

v.

12-cv-633-wmc

ROBERT DICKMAN, *et al.*,

Defendants.

State inmate Derrick L. Smith filed this proposed civil action pursuant to 42 U.S.C. § 1983, concerning the conditions of his confinement at the Marathon County Jail. On November 25, 2013, the court denied his request for leave to proceed and dismissed the complaint without prejudice for failure to comply with federal pleading rules found in Fed. R. Civ. P. 8(a), 18(a) and 20(a). (Dkt. #29.) Smith has since filed two amended complaints in an effort to cure these deficiencies and again seeks leave to proceed.

Because he is incarcerated, the PLRA requires the court to screen the complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. In addressing any *pro se* litigant's complaint, the court must read the allegations generously, reviewing them under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even applying this lenient standard to the amended pleadings submitted more recently by Smith, his request for leave to proceed must be denied. Moreover, this case will now be dismissed with prejudice for reasons set forth below.

ADDITIONAL ALLEGED FACTS[1]

As noted previously in this case, Smith is presently in custody at the Marathon County Jail, awaiting trial in Case No. 2012CF386. In his first amended complaint, Smith contends that the Jail's Administrator, Robert Dickman, failed to maintain an adequate law library at the Jail. (*Amended Complaint*, Dkt. # 31). Unidentified John and Jane Doe guards at the Jail also failed to "enforce [his] privilege to visit that inadequate law library." (*Id.*). As a result, Smith contends that he was unable to research or prepare for a preliminary hearing and final parole revocation proceeding that resulted in his return to state prison in August of 2012. (*Id.*). In his second amended complaint, Smith also adds that Dickman failed to afford him access to sufficient stamps, copies and unspecified legal materials. (*Amended Complaint*, Dkt. # 32). He requests injunctive relief and damages for the violation of his civil rights.

OPINION

The proposed complaints filed by Smith scarcely include "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In that respect, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements" are insufficient to establish a plausible claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2007) (citing *Twombly*, 550 U.S. at 555) (observing that courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). To the extent that Smith contends he was denied his constitutional right to access the courts due to lack of an adequate law library and legal supplies, his allegations must be dismissed because the court has already addressed those claims in another case.

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1 The court incorporates, but will not repeat, those facts realleged in Smith's amended pleadings that are set forth in the court's earlier opinion denying leave to proceed. (Dkt. #29.)

In *Smith v. Dickman*, Case No. 12-cv-742-wmc (W.D. Wis.), this court considered Smith's claim that his right to access the courts was impeded by the lack of legal supplies or an inadequate law library at the Marathon County Jail law library. In that case, Smith complained that he was unable to prepare pleadings or defend against the impending revocation of his parole. Assuming that all of his allegations were true and construing all inferences in his favor, the court noted that Smith was represented by counsel during his parole revocation proceeding. Smith did not otherwise show that his rights were adversely effected. *See, e.g., Lewis v. Casey*, 518 U.S. 343, 351 (1996); *In re Maxy*, 675 F.3d 658, 660-61 (7th Cir. 2012). In particular, Smith did not demonstrate that he was unable to assert any particular claim or defense in connection with the revocation of his supervised release. *See Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006) ("[T]he mere denial of access to a prison library or to other legal materials is not itself a violation of a prisoner's rights; his right is to access the courts, and only if the defendants' conduct prejudices a potentially meritorious challenge to the prisoner's conviction [or] sentence . . . has this right been denied."). Accordingly, the court dismissed the complaint in that case with prejudice on November 22, 2013. (Case No. 12-cv-742 (dkt. #34).)

The proposed amended complaints that Smith has filed in this case essentially just repeats these same allegations. As a result, these claims are barred by the doctrine of claim preclusion. *Hagee v. City of Evanston*, 729 F.2d 510, 514 (7th Cir. 1984) (explaining that doctrine of *res judicata* is designed to protect litigants from facing multiple lawsuits and "to enhance judicial economy by prohibiting repetitive litigation"). Moreover, for the same reasons outlined in that case, Smith fails to articulate a viable claim upon which relief can be granted. For these reasons alone, the court will not grant Smith leave to proceed.

In addition, repetitive allegations of the kind proposed by Smith are considered "malicious" and are grounds for dismissal under the PLRA, 28 U.S.C. § 1915A(b). *See Lindell v. McCallum*, 352 F.3d 1107, 1109-10 (7th Cir. 2003) (citing *Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1983) (noting that it is "malicious" for a *pro se* litigant to file a lawsuit that duplicates allegations of another federal lawsuit by the same plaintiff) (citations omitted). Because Smith's proposed allegations duplicate those dismissed previously in Case No. 12-cv-742, this case will be dismissed with prejudice as both frivolous and malicious.

Having accrued at least five "strikes" for filing frivolous actions,[2] Smith is now barred from proceeding without prepayment of the filing fee unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). The dismissal in this case will also count as a strike. Because Smith was warned previously that he would be subject to additional sanctions if he continued his practice of filing repetitive claims, the court will also impose a monetary penalty of $100.00 for his failure to heed that admonition. (*Order* of Nov. 27, 2013, Dkt. # 30, at 14-15). Until this sanction is paid in full, the Clerk of Court shall open no new civil action on Smith's behalf. Instead, any new proposed complaint will be sent to chambers for review before docketing. If the proposed pleading appears to have any plausible merit and is not otherwise barred by 28 U.S.C. § 1915(g), it will be addressed accordingly. Otherwise, while the pleading will be retained for the record on the court's miscellaneous docket, no further action will be taken.

[2] *See Smith v. Grams et al.*, Case No. 09-cv-387-bbc (W.D. Wis. Feb. 4, 2010); *Smith v. Dickman, et al.*, Case No. 12-cv-742 (W.D. Wis. Nov. 22, 2013); *Smith v. Dickman, et al.*, Case No. 12-cv-743-wmc (W.D. Wis. Nov. 22, 2013), *Smith v. Daniel Snyder et al.*, Case No. 13-cv-647 (W.D. Wis. Nov. 25, 2013); and *Smith v. Judge Vincent Howard et al.*, Case No. 13-cv-658-wmc

ORDER

IT IS ORDERED that:

1. Plaintiff Derrick L. Smith's request for leave to proceed is DENIED and his complaint is DISMISSED with prejudice as legally frivolous and malicious.

2. The dismissal in this case will count as a STRIKE for purposes of 28 U.S.C. § 1915(g).

3. Smith shall pay a SANCTION in the amount of $100.00 for his failure to heed the court's order of November 27, 2013, which warned him not to file any further repetitive claims. Until this sanction is paid in full, the Clerk of Court shall not open any new civil action on Smith's behalf regardless of filing fee. Instead, any new proposed complaint will be sent directly to chambers for review before docketing. If the proposed pleading appears to have any plausible merit and is not otherwise barred by 28 U.S.C. § 1915(g), it should be addressed accordingly. Otherwise, those pleadings should simply be retained for the record on the court's miscellaneous docket and no further action taken.

Entered this 10th day of January, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge

(W.D. Wis. Nov. 25, 2013).